IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 738 OF 2007

Narayan Eknath Lokegaonkar ..Petitioner

Vs.

Kandivli Education Society
Through the President and ors. ..Respondents

Ms. Ushajee Peri i/by Mr. Mihir Desai for petitioner.
Mr. P.N. Shashtri for respondent nos.1 and 2.
Mr. P.G. Sawant, AGP for respondent nos.3 and 5.
Ms. Deepa Chavan i/by Little and Co. for respondent no.4.

CORAM: B.H. MARLAPALLE &
S.R. SAHTE,JJ.

Date : July 02, 2007.

P.C.:

1. Heard the learned counsel for the petitioner who was working as a Lecturer under the respondent no.2-College run by the respondent no.1-Society. He was appointed as an Internal Examiner for "Physics" for the XII Standard Practical Examination to be held in February, 2005. The examination was conducted on 15th and 16th February, 2005. On the first day Mr. Chowdhary was the External Examiner and he was a Senior Teacher from Patkar College at Goregaon. When

Mr.Chowdhary came for inspection of the Laboratory on 14/2/2005, the petitioner was not available and had left the College premises. On the date of the examination i.e. on 15/2/2005 as soon as Mr.Chowdhary entered the Laboratory, the petitioner, in front of the students, misbehaved with him saying that he will not allow Mr.Chowdhary to enter the Laboratory. Consequently, Mr. Chowdhary immediately left the College after reporting the matter on phone to the concerned Board Authorities and also submitted a written complaint of ill-treatment/rude behaviour to the Principal of respondent no.2-College. Another Examiner by name Mr. V.S. Patil from Vikas Junior College came to be appointed in place of Mr.Chowdhary as the External Examiner and with him also the petitioner behaved in the same fashion. Mr.Patil also reported the rude and indifferent behaviour of the petitioner to the Board.

2. The Board initiated enquiry by appointing an Enquiry Committee which submitted its report on 29/10/2005. The members of the Committee were Joint Secretary and Assistant Secretary from the Board. The

Committee held the petitioner guilty and noted that the petitioner wanted to conduct the practical examination in the absence of the External Examiner and that he wanted to show his influence. The Committee recommended that the petitioner should not be appointed as an Internal Examiner in future. The Board by its letter dated 28/12/2005 informed the respondent no.1-Society regarding the Committee's findings and the recommendations and called upon the respondent no.1-Society to initiate disciplinary action against the petitioner under M.E.P.S. Rules, 1981. In addition, the Board also disqualified the petitioner from being appointed as an Examiner for the practicals from February/March 2006 onwards. In addition, the Board directed to recover the honorarium paid to the petitioner. Two different writ petitions came to be filed before this Court i.e. Writ Petition No.1777 of 2005 and Writ Petition No. 1244 of 2006. Writ Petition No. 1244 of 2006, in which the petitioner and three others had sought directions to set aside the report submitted by the Deputy Director of Education on 22/2/2006 was disposed off on 5/7/2006 with a direction to the Deputy Director of Education to complete the enquiry, if not already completed.

3. The report dated 29/10/2005 of the Enquiry Committee was placed before the Standing/Ad-hoc Committee of the Divisional Board which considered and deliberated on the said report. On 24/1/2006 the petitioner made a representation to the Chairman of the Board requesting for re-enquiry into the matter and, therefore, on 8/2/2006 the Standing/Ad-hoc Committee heard everyone concerned and passed an order on 15/2/206, thereby modifying the earlier order dated 28/12/2005 passed against the petitioner for recovery of honorarium as well as permanently de-barring the petitioner from being an Examiner for the practical examinations. As per the order dated 15/2/2006 the petitioner's honorarium was directed to be paid to him instead of recovering the same and paying to the Board. The petitioner's request for fresh enquiry was turned down and lastly, the bar imposed on the petitioner being an Examiner was maintained only for the examinations held in February/March, 2006. Admittedly, in view of this revised order dated 15/2/2006, nothing further survives in this petition as it has become infructuous.

4. It is also required to be noted that the Management proceeded against the petitioner under M.E.P.S. Rules, 1981 and he came to be dismissed from service with effect from 18/11/2006 and the petitioner has challenged the same in Appeal No. MUN/33/2006 which is presently pending before the School Tribunal at Mumbai. The impugned order dated 15/2/2006 has been passed by the Board which has been established under Section 4 of the Maharashtra Secondary and Higher Secondary Boards Act, 1965. Sections 18 and 19 of the said Act detail the duties and powers of the said Board and Divisional Board respectively. The Board is governed by the statutory regulations known as the Maharashtra Secondary and Higher Secondary Board Regulations 1977 which have been framed under Section 36 of the Act. It has the power to appoint Examiners and if it notices negligence and omission in carrying out duties or any misbehaviour or if any Examiner obstructs the conduct of such examination, it is empowered to take disciplinary action and award suitable punishment. The Board is an academic body created by a statute and entrusted with the duties as per the regulations. While passing the impugned order, principles of natural justice have been fully

followed and, therefore, we do not see any reasons to interfere with the order of punishment dated 15/2/2006 passed by a statutory body like the respondent no.4-Board.

5. Hence, the petition is rejected summarily. However, we make it clear that the pending appeal of the petitioner before the School Tribunal has to be decided on its own merits and without being influenced by this order.

(S.R. Sathe,J.) **(B.H. Marlapalle,J.)**